

Appl. No. 09/181,533
Amdt. dated August 11, 2005
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group 2643

PATENT

REMARKS/ARGUMENTS

Claims 1-33 are pending in the current application. Claims 1-25 and 33 are rejected. Claims 26-32 were withdrawn from consideration.

Independent claims 1, 16, 22 and 33 are amended herein. These amendments are fully supported by the specification, drawings and claims as originally filed; no new matter has been added.

Claims 1-13, 15-17 and 20-25 stand rejected under 35 U.S.C. §103(a) as unpatentable over Epley. U.S. Pat. No. 4,756,312 (Epley), in view of Grad U.S. patent 5,811, 896 (Grad). Claim 14 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Epley as applied to Claim 1 above and further in view of U.S. Pat. No. 5,233,322 (Posey '322).

Entry of the requested amendments and favorable consideration of the comments contained herein are requested.

REJECTION UNDER 35 U.S.C. §103(a)

Claims 1-13, 15-17, 20-25 and 33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Epley in view of Grad '896 (See 5/11/04 Office Action, at page 2). Applicants respectfully traverse this rejection. Claim 1 recites that "the externally applied magnetic field is generated by a magnetic field means that is substantially located outside of the ear canal or substantially physically disengaged with hearing the device." Claim 15 recites a similar limitation with regard to the "external magnet." Epley alone or in combination with Grad, does not teach or reasonably suggest a magnetic field means that is substantially located outside of the ear canal or substantially physically disengaged with hearing the device. In fact, Epley teaches just the opposite, in that its magnet 54 is physically engaged to its hearing device 10 while the device is in the ear. (See Epley at Col 8, lines 49-54 and Figure 1).

The Examiner has contended in the recent office action that Epley at Col 5, lines 22-29 meets the limitations of the claimed invention (See 5/11/05 Office action, at page 9).

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Applicants must respectfully disagree. Nowhere does Epley teach or suggest "a magnetic field means that is substantially located outside of the ear canal or substantially physically disengaged with the hearing device" as is recited in claim 1. In fact, as the Examiner correctly points out, Epley's Figure 1 shows a magnetic device 54 in contact with its hearing device and Epley expressly states that this contact is necessary for insertion and removal (Epley at Col 8, lines 49-54). This contact is not only necessary during insertion and removal of Epley's hearing aid, but also for activation of its switches. It is the explicit teaching that Epley's magnetic be "positioned adjacent [its] switches 24a and 24" and thus in contact with its hearing device 10 in order to open and close its switches (See Epley at Col 11, lines 6-11). This contact requirement is further evidenced by the fact that Epley teaches that "magnetic switches 24a and 24b are selectively actuated one at time." (See Epley at Col 10, lines 63-64). This only can be accomplished when Epley's magnetic 54 is physically engaged with its hearing aid. Because of this adjacency/physical engagement requirement, Epley teaches away from an external magnetic field means or magnet "substantially physically disengaged with the hearing device" as is recited in claim 1 or claim 15.

However, to expedite prosecution and without acquiescing to the propriety of the Examiner's rejection, Applicants have amended claim 1 to now recite that the field means effects "actuation of the reed switch when the field means is at a first orientation with respect to the reed switch and when the field means is at a second orientation with respect to the reed switch" Claim 15 has been similarly amended in regard to the "external magnet." Support for these amendments is found on pages 13-14, 17-18 and Figures 5-6 and 12. None of the cited references alone or in combination, teach or suggest such a limitation. Epley in particular teaches away since its magnet 54 can effect actuation in one, and only one orientation, that is when its magnet 54 "is positioned adjacent the switches 24A and 24B on the opposite sides of the switches from the bias magnets." (See Epley at Col 11, lines 6-11). Otherwise Epley can not achieve its objective of selective activation of its switches 24a and 24b. Further, as shown in Epley's Figure 1, there is no room to even re-orient Epley's magnet 54 in the ear canal. Accordingly, withdrawal of the rejection is respectfully requested.

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In regard to claim 21, the claim recites "activating the reed switch with the control magnet means substantially physically disengaged from the hearing device." As described *supra*, Epley teaches away from the method of claim 21, in that its magnetic control means is engaged, versus disengaged, with its hearing aid. Further, Applicants have amended claim 21 to recite that reed switch is "actuatable when the control means is in a first orientation with respect to the reed switch and when the control means is in a second orientation with respect to the reed switch. As described *supra*, Epley also teaches away from such a limitation. Accordingly, withdrawal of the rejection of claim 21 is respectfully requested.

Claims 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Epley in view of Posey (See 6/22//04 Office Action, at page 8). Applicants respectfully submit that this rejection is now moot in light of the amendment of claim 1. Accordingly, Applicants respectfully request withdrawal of the rejection.

In regard to claim 33, the claim recites " the reed switch is configured to be activated in the ear by the externally applied magnetic field when the external magnetic field is applied at variable directions with respect to a longitudinal axis of the reed switch". For reasons stated *supra*, Epley teaches away from a magnetic field being applied at variable directions with respect to the longitudinal axis of the read switch in that Epley's magnet 54 is in contact with its hearing device and can not be repositioned in the ear canal. However, to expedite prosecution and without acquiescing to the propriety of the Examiner's rejection, Applicants have amended claim 33 to now recite that "the reed switch is configured to be activated in the ear by the externally applied magnetic field when the external magnetic field is applied at variable directions with respect to a longitudinal axis of the reed switch and a pole end of a magnet generating the external magnetic field is positioned at an aperture of the ear canal, the generating magnet physically disengaged from the hearing device. Support for this amendment is found on pages 13-14, 17-18 and Figures 5-6 and 12. No where does Epley teach or suggest such a limitation. Accordingly, withdrawal of the rejection is respectfully requested.

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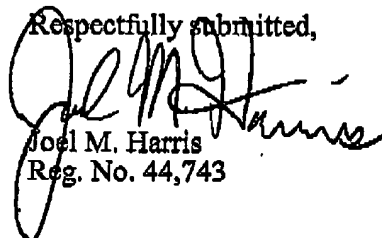
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CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

It is believed that no fees are due with this response; however, should any fees be required under 37 C.F.R. §§ 1.16 to 1.21 for any reason, the Commissioner is authorized to charge Deposit Account No 20-1430. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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Attachments
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